



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Henry G. Kirschenmann, Jr.

File: B-239114

Date: July 23, 1990

Henry G. Kirschenmann, Jr., for the protester.
Thomas C. Komarek, Assistant Secretary for Administration and Management, Department of Labor, for the agency.
David Hasfurther, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against the designation of an accounting system certification requirement in a negotiated procurement as relating to proposal "responsiveness" is academic where the agency states that it will consider the requirement as a matter of responsibility and in fact does so.
2. Protest against the broad manner in which a requirement is written is denied where agency explains the need for the requirement and the protester does not show that the agency's position is unreasonable.

DECISION

Henry G. Kirschenmann, Jr., protests the requirement for an accounting system certificate in request for proposals (RFP) No. DAA-90-15, issued by the Employment and Training Administration, Department of Labor, for a cost-type contract for the development of a procurement training course. The protester contends that an offeror's failure to submit the certificate with its proposal should not be a ground for its rejection. The protester views the certificate as a matter of responsibility.

We dismiss the protest in part and deny it in part.

The RFP, issued on February 1, 1990, required the submission of proposals by the closing date of March 23. The RFP at section M.1(A), part 3, required offerors to submit with their proposals a "One Accounting System Certificate" containing a certification by a certified public accountant,

a licensed public accountant, or an acceptable audit organization that the offeror "has an established accounting system with internal controls" capable of fulfilling five specific functions. Offerors were advised that the failure to submit this certificate with their proposals "will be a basis for determination of nonresponsiveness."^{1/}

Kirschenmann protested the requirement to the contracting agency by a letter dated February 25. The protester argued that it was difficult for a small business to provide the required certification and requested the agency to strike the requirement "as a basis for a determination of responsiveness." According to the agency, on March 14 the contracting officer orally advised Kirschenmann that, notwithstanding the RFP language, the agency viewed the requirement for a certificate as a matter of responsibility, not responsiveness. Also, the agency reports in response to the protest that the agency considers the certificate to be a matter of responsibility and says that offers which are submitted without the certification will not be rejected during the evaluation for that reason. The agency also reports that all of the offers received, including one submitted by Kirschenmann, have been initially considered acceptable and are being evaluated.

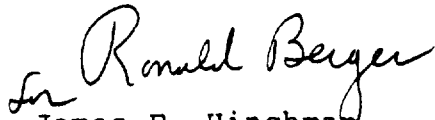
The protester appears to object to the agency's failure to issue a written amendment to the solicitation specifying that the certification will be considered a matter of responsibility. While it may have been better had the agency issued a written amendment to the solicitation, Federal Acquisition Regulation § 15.606; Free Electron Laser Corp., B-236931, Jan. 18, 1990, 90-1 CPD ¶ 66, the argument is academic since the agency has stated in the protest report that the certificate will be considered as a matter of responsibility and it has not rejected any proposal for failure to include the certificate.

The protester also "questions" the "broadness" of the certification, indicating that it may be difficult for a

^{1/} Both the agency and the protester use the term responsiveness. The concept of responsiveness is not applicable to negotiated procurements such as the one here. International Filter Mfg. Corp., B-235049, June 21, 1989, 89-1 CPD ¶ 586. Where a proposal submitted under a negotiated procurement fails to meet a material requirement of the RFP, it must ultimately be rejected as unacceptable, not as nonresponsive. Industrial Lift Truck Co. of New Jersey, Inc.; Doering Equip., Inc., B-230821; B-230821.2, July 18, 1988, 88-2 CPD ¶ 61.

small business to meet. The agency responds that it requires the certification to ensure that firms have an accounting system that is adequate to support a cost-reimbursement contract such as this. The protester has not shown that the Department's position is unreasonable, and we therefore find no basis to object to the agency's inclusion of the certificate requirement.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel